



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

Case No.: 440-2012-05018

██████████,
Complainant,

v.

ADECCO,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On August 27, 2012, ██████████ ("Complainant") filed a Complaint with the Commission against Adecco ("Respondent") alleging discrimination on the basis of disability and race (African-American) in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) and ██████████. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented before the Commission is whether Complainant was denied a reasonable accommodation and ultimately terminated because of her race and disability. In order to prevail, Complainant must show that 1) she suffered from a condition that substantially limits a major life activity; 2) she suffered an adverse employment action; 3) she was meeting Respondent's legitimate business expectations; and 4) Respondent treated similarly-situated non-disabled employees of another race more favorably than Complainant.

It is clear that Complainant's service connected Post Traumatic Stress Disorder (PTSD) constitutes a disability for purposes of the applicable statutes. Moreover, there is no question that Complainant suffered an adverse employment action when Respondent sent her an email indicating that her assignment with Arcelor-Mittal had ended. Thus, the remaining issues are whether Complainant was meeting Respondent's legitimate business expectations and whether



Respondent treated similarly-situated non-disabled employees of another race more favorably than Complainant.

By way of background, Complainant was recruited, interviewed, selected, and hired by Respondent. In August of 2011, Respondent placed Complainant on a job assignment with Arcelor-Mittal as an order entry analyst. While assigned to Arcelor-Mittal, Complainant's direct supervisor was the shift supervisor, Lauren Lowell ("Lowell.") As a result of Complainant's PTSD, she needed to adjust her work hours in order to attend appointments twice a month at the local veteran's hospital; as such, she would verbally ask Lowell to adjust her work hours to attend these appointments. Complainant would follow up the verbal request by sending emails to Lowell, memorializing the verbal conversation. While the Manager of Order Management, Jennifer Dorman ("Dorman") denies being aware that Complainant requested an accommodation, namely, time off to attend appointments, both Dorman and Lowell acknowledge their awareness of Complainant's PTSD and need to attend appointments to treat the condition. Similarly, Lowell admitted that Complainant requested an accommodation to take time off to attend appointments at the veteran's hospital.

The available evidence further indicates that Complainant's symptoms worsened from February 2012 through July 2012 as a result of an on-going conflict with a co-worker, Suzy Anderson ("Anderson.") Nevertheless, on July 31, 2012, Complainant left work for a scheduled PTSD treatment and informed her physician that the conflict with Anderson, along with other issues, was causing her to feel suicidal. Complainant was immediately hospitalized and remained in their care from July 31, 2012 through August 9, 2012. The evidence clearly shows that the hospital and her physician refused to allow Complainant to communicate to others during this time; therefore, she relied upon her family to inform the necessary parties of her condition. Although Complainant was scheduled to work on August 1 through August 3 as well as August 8 through August 9, several members of her family informed Respondent and Arcelor-Mittal of Complainant's hospitalization. The evidence clearly shows that Complainant's fiancé spoke with Dorman by phone on August 1, 2012, advising that Complainant was hospitalized and prohibited from communicating with others. He also stated that he did not know when she would be released from the hospital. Two days later, on August 3, 2012, Christina Mahmet ("Mahmet"), Respondent's Staffing Representative, called Complainant's mother seeking information regarding Complainant's status. Evidence shows that Complainant's mother informed Mahmet that Complainant was hospitalized, prohibited from communicating with others, and that she too was unsure of the date in which Complainant would be released from the hospital. Mahmet also requested Complainant to call or email her once Complainant was able to do so.

Despite these communications with Complainant's family, on or about August 7, 2012, Mahmet sent a letter to Complainant's home indicating that Respondent was informed from Dorman that Complainant had been hospitalized since August 1, 2012 and that Mahmet herself spoke with Complainant's mother about Complainant's condition. Mahmet indicated that she tried leaving a voicemail on Complainant's phone, but she was unable to do so since Complainant's

voicemail box was full. Mahmet also noted that she needed to know whether Complainant would be able to work August 8 and August 9 as she was scheduled to work on those days. On August 8, 2012, Mahmet emailed Complainant stating that her assignment had ended with Respondent as she had not been to work in a week. Respondent claims that Arcelor-Mittal requested Respondent to assign someone else to perform Complainant's job duties; ironically, Arcelor-Mittal contends that Respondent asked whether they needed someone to perform Complainant's duties and they merely responded in the affirmative.

The record clearly shows that agents for Respondent were aware of Complainant's medical condition as well as her need for an accommodation. The record is also clear that Arcelor-Mittal and Respondent were notified that Complainant was in the hospital during the days immediately preceding her termination and was prohibited from speaking with anyone. While Respondent contends that Complainant failed to meet its legitimate business expectations for her position because of her week-long absence, Respondent has not submitted any evidence showing that it was dissatisfied with Complainant's work performance prior to her hospitalization. Further, while it is unclear whether Arcelor-Mittal or Respondent initiated the termination process or formally terminated Complainant, Adecco actively found a replacement for Complainant and emailed Complainant, memorializing her termination from Arcelor-Mittal.

Complainant was ultimately released from the hospital on August 9, 2012 and called Respondent as well as Arcelor-Mittal three times, but to no avail. The records also confirm that Complainant called Respondent three times on August 10, 2012 and twice on August 14, 2012, but was not placed in another assignment. Evidence indicates that from August 15, 2012 to September 18, 2012, Complainant, in compliance with Adecco's Mandatory Contact Notice, called Respondent on a weekly basis to notify them of her availability, but she was not placed in another assignment. Complainant eventually stopped calling Respondent in mid-October.

The lack of any response from Respondent from August through October caused Complainant to believe that Respondent intentionally avoided placing her at new assignments because of her disability. On November 9, 2012, Mahmet contacted Complainant to inform her of an available night-shift position from 4:00 p.m. to 12:00 a.m.; however, Complainant declined the position as it interfered with her parental responsibilities. Mahmet eventually left Complainant messages concerning several available data entry positions, but failed to provide any pertinent details regarding the positions. Complainant contends that Respondent treated non-disabled employees of non-African-American descent more favorably and Respondent failed to provide evidence to the contrary; thus, based upon the aforementioned evidence, probable cause exists to believe that Respondent's actions were merely pretext for discrimination on the basis of race and discrimination and that an unlawful discriminatory practice may have occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged

discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law judge will hear this matter. Ind. Code § 22-91-1-16, 910 IAC 1-3-0.

July 3, 2013

Date

Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission